SBCivil Writ Petition No.944/2005

Dev Krishna & Ors.
v.
State of Rajasthan & Ors.

Date of Order :: 24th March, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioners.
Mr. R.R.Nagauri, for the respondents.

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By this petition for writ a challenge is given by the petitioner to the order dated 2.11.2004 passed by learned Additional District Judge No.2, Jodhpur rejecting the application under Section 151 CPC to recall the order dated 26.4.1993 whereby an application for restoration of the suit and an application for condonation of delay in filing application for restoration of appeal was rejected.

The petitioners by way of filing an appeal assailed validity and propriety of the judgment and decree dated 19.7.1984 passed by the trial court rejecting the suit preferred by the petitioners. The appeal was dismissed for want of prosecution on 15.12.1990. According to the petitioners no information with regard to dismissal of the appeal in default was given to him by his counsel. He came to

know about dismissal of the appeal on 20.10.1991 and then after obtaining a copy of the order dated 15.12.1990 he preferred an application for restoration of appeal alongwith an application for condonation of delay in filing the application for restoration of appeal on 22.11.1991. The aforesaid application was also dismissed in default on 26.4.1993. An another application thereafter was filed by the petitioners to restore the application for restoration which stood rejected by the order impugned.

It is urged on behalf of the petitioners that they have been penalised for the carelessness of their counsel as they were not knowing about dismissal of the appeal for want of prosecution. It is stated that during the proceedings of the appeal the petitioners were not required to remain present before the court being represented by their counsel. It is further submitted that on 26.4.1993 the counsel for the appellants failed to appear before the court due to strike of lawyers. In any case, according to counsel for the petitioners, the petitioners lost the lis without adjudication on merits and, therefore, they prayed for setting aside the order impugned and for restoration of the appeal.

I have considered the contention made by counsel for the petitioners.

From perusal of order impugned and the documents annexed with reply to the writ petition the carelessness on part of appellants as well as on part of their counsel is writ large. The appeal was pending before the court since 1984 and, therefore, the anxiety of the court adjudicating the appeal to dispose it of is genuine. A litigant is always required to be vigilant with regard to proceedings of the case, however, at the same time the faith put by a litigant in his counsel cannot be ignored. In normal course litigants put absolute faith in their counsel and, therefore, they do not remain vigilant about day to day proceedings of their cases. In the instant matter also the petitioners appear to be under bonafide belief about their efficacious representation by their counsel. Be that as it may, resultant is that the appeal stood rejected without its adjudication on merits which is always desirable to maintain faih in judicial system.

In totality of facts of the case I consider it appropriate to accept this writ petition and to restore the restoration application No.203/93 decided by Additional District Judge No.2, Jodhpur by the order dated 2.11.2004 subject to the condition that the petitioners make a payment of cost in a tune of Rs.3000/- to the counsel for the respondents No.3 to 6 within a period of one month from today. The appellate court shall hear and dispose of the application for

restoration afresh within a period of three months from today. The parties are directed to appear before the appellate court on 17.4.2006.

(GOVIND MATHUR),J.

kkm/ps.